

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of Davis-Dang Hoang Nhan
Serial No. 10/699,193
Filed October 31, 2003
Confirmation No. 3474
For STRETCHABLE ABSORBENT ARTICLE
Examiner Melanie J. Hand

Art Unit 3761

January 15, 2009

REPLY BRIEF

This is a reply to the Examiner's Answer mailed November 18, 2008. Appellants' reply is being filed to respond to the Examiner's Response to Argument set forth on pages 6-7 of the Examiner's Answer.

In its Response to Argument, the Office asserts for the first time that a flexible substrate is inherently or implicitly also a stretchable substrate. The Office has taken the position that the flexible backsheet of Hasse et al. is a "compliant material that can conform to the general shape of the user [and] **necessarily stretches** to accomplish this confirmation; that is the nature of a compliant material". Emphasis added. See page 6, lines 15-19 of Examiner's Answer. However, there is no basis whatsoever found anywhere in Hasse et al. for the Office's assertion that the backsheet necessarily stretches simply because it is flexible. To conform to the general shape of the user, the backsheet of Hasse et al. need only be flexible enough to bend around the contours. The backsheet need not stretch to conform to the contours of the user. The passage of Hasse et al. cited by the Office (i.e., col. 20, lines 51-53) in support of its position provides the following.

As used herein, the term "flexible" refers to materials which are compliant and will readily conform to the general shape and contours of the human body.

Respectfully, the Office is improperly equating "flexible" or "compliant" with "stretchable". Flexible means that a material (i.e., the backsheet of Hasse et al.) is able to repeatedly bend. See, e.g., Merriam-Webster Online at <http://mw1.merriam-webster.com/dictionary/flex>. Compliant means conforming to requirements (i.e., bending to conform to the general contours of the human body). See, e.g., Merriam-Webster Online at <http://mw1.merriam-webster.com/dictionary/compliant>.

Stretchable, as defined at paragraph [0057] of the specification, means that the material may be extensible or elastic, (i.e., capable of being extended or elongated). Thus, the term flexible or compliant does not have the same meaning as stretchable. Just because the backsheet disclosed by Hasse et al. may be flexible or compliant does not mean that the backsheet is inherently stretchable. It is possible for the outer cover and liner to be flexible or compliant and not stretchable. In other words, it is possible that the backsheet of Hasse et al. can be repeatedly bent or conformed to the general contours of the user but not extended/elongated.

For example, U.S. Patent No 6,315,748 (most recently cited in the Appeal Brief) discloses attachment straps 14, 16, and 18 formed from a nonstretchable polyethylene film. See col. 3, lines 32-34. In operation, the straps 14, 16, and 18 secure a tensioning segment 12 to an individual's hand for use in treating carpal tunnel syndrome. In Figure 5 of the '748 patent, the attachment straps 14, 16, and 18 are clearly seen conforming to the contours of an individual's hand. The nonstretchable attachment straps thus conform to the general

contours of an individual (i.e., the individual's hand) without stretching as they are made out of nonstretchable material. Accordingly, a material (i.e., the backsheet of Hasse et al.) may be flexible and conform to the general contours of an individual while still being nonstretchable, as evidenced by the '748 patent.

Accordingly, the Office's assertion that the backsheet of Hasse et al. necessarily stretches to conform to the contours of the user is an improper extension of Hasse et al. Rather, Hasse et al. fail to disclose either expressly or inherently a stretchable outer cover.

Conclusion

In addition to the reasons set forth in the appellants' Appeal Brief, the rejections of the claims on appeal are submitted to be in error for the reasons set forth above.

Appellants do not believe that any fee is due. However, the Commissioner is hereby authorized to charge any deficiency or overpayment of any feeds to Deposit Account No. 12-384.

Respectfully submitted,

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